
Local Government Committee

HB 2103

Brief Description: Mitigating harm and improving equity in large port districts.

Sponsors: Representatives Orwall, Fitzgibbon, Gregerson, Santos and Reeves.

Brief Summary of Bill

- Requires port districts operating a large airport ("port districts") to undertake a remedial mitigation program to, among other things, replace failed mitigation equipment previously provided to a property owner near the airport.
- Requires a portion of port districts' regular tax levy revenue, including half of any dollar increase in revenue over the prior levy, to be used for the remedial mitigation program.
- Creates a grant program under which the Department of Commerce can provide grants for port districts to contract with building inspectors for building inspections required under a remedial mitigation program.
- Requires port districts to conduct assessments and community outreach prior to taking an action involving a capital project with a value of \$12 million or more.
- Establishes the Port District Environmental Equity Fund for making grants or loans to port districts to undertake remedial mitigation programs or to conduct required assessments and outreach.

Hearing Date: 1/16/24

Staff: Kellen Wright (786-7134).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Port districts are special purpose districts empowered to acquire, construct, maintain, operate, develop, and regulate harbor improvements; rail or motor transfer and terminal facilities; water transfer and terminal facilities; air transfer or terminal facilities; other commercial transportation, transfer, handling, storage, and terminal facilities; and industrial improvements.

A port district can be formed if at least 10 percent of the registered voters within a county petition for the formation of the district, and the district's formation is approved by voters at an election. A port district may be coextensive with a county. Port districts are governed by commissions of either three or five commissioners.

Port districts can charge service fees for the use of their facilities and can also raise revenue through property tax levies. A property tax is a tax levied on all real and personal property based on the value of the property, unless the property is subject to an exemption. There are two significant limitations on property tax in Washington. The first is a constitutional limitation. Article VII, section 2 of the state Constitution limits the amount of annual tax from all sources that may be levied upon property to 1 percent of the total value of that property. This limitation means that, without specific authorization from voters, the maximum tax that can be imposed per \$1,000 of value is \$10. The other limit is statutory. Generally, the amount of property tax levied by a taxing district cannot be increased by more than 1 percent of the amount that was levied the prior year. In other words, the maximum annual levy is 101 percent of the prior year's levy. Increases in revenue due to new construction, property improvements, and certain other factors are exempt from this limitation. There are additional limits on the aggregate amount of property tax that taxing districts can impose.

To adopt an increase to a property tax levy within the statutory limits, the governing body of the taxing district must adopt an ordinance or resolution authorizing the increase. A taxing district may temporarily increase its levy by more than the statutory limit, up to its statutory maximum tax rate, with voter approval. A taxing district that does not annually increase its tax by the statutory limit does not permanently lose the unused capacity. Instead, the unused capacity is "banked" and can be used by the district in the future to increase its levy by more than the annual statutory limit, up to the maximum amount it could have levied had it been using the full statutory increase each year.

A port district can impose a regular annual levy of up to 45 cents per \$1,000 of assessed value of the taxable property within the district for general port purposes. A levy for the payment of principal and interest on the general bonded indebtedness of the port district may be made in addition to the regular annual levy rate. An additional levy, with voter approval, can be imposed for dredging, canal construction, and land leveling or filling at a rate of up to 45 cents per \$1,000 of assessed value. If a port has created an industrial development district within the port, it may also impose a levy for six years, at up to the same 45 cents per \$1,000 of assessed value, to be used for harbor improvements and industrial development. This levy can be reimposed for a subsequent six years with voter approval, and port districts in counties bordering the Pacific Ocean can reimpose the levy for a third and final six-year period with voter approval.

Airports can generate a significant amount of noise for those who live around the airport. The Federal Aviation Administration (FAA) currently uses a threshold of a Day-Night Average Sound Level of 65 decibels to determine significant noise impacts. A Day-Night Average Sound Level is a measure of the average decibel level of noise a person experiences over a 24-hour period due to aircraft operations. In determining this level, any aircraft noise at night is increased by 10 decibels.

Port districts in Washington that operate an airport serving more than 900 scheduled jet flights per day are authorized to undertake noise abatement programs to alleviate the impact of jet noise on the surrounding area. In 2023, only Seattle-Tacoma International Airport, operated by the Port of Seattle, served this many jet flights, averaging more than 1,000 jet flights per day. Spokane International Airport, by contrast, averages fewer than 250 jet flights per day.

An aircraft noise abatement program can only be undertaken within an "impacted area." This area extends two miles from the centerline of any runway to a point 10 miles north of the paved north end of any runway, and to a point 13 miles south of the paved south end of any runway. If any portion of a property is within the impacted area, then the entire property is considered within the area.

Before undertaking a noise mitigation program, the port must investigate and monitor the aircraft noise generated by the airport. Based on this, the port may adopt a program of abatement. This program must be amended periodically to conform to the needs demonstrated by the monitoring programs. The abatement program may include, but is not limited to, acquiring affected property directly, assisting with transactions involving impacted properties, providing mortgage insurance, or soundproofing structures.

In order to receive soundproofing assistance, the owner of the property must waive damages and convey an easement for the operation of aircraft and for the resulting noise to the port district. A property can receive multiple different kinds of benefits, but can generally only receive each type of benefit once. The only exception applies for properties that are now subject to increased or differing noise impacts that would have afforded a different level of mitigation or that contain a soundproofing installation, structure, or other type of sound mitigation equipment that was previously provided but that is determined, after an inspection, to be in need of repair or replacement. The port district must conduct inspections of homes wherein mitigation equipment or improvements are no longer working as intended, and must work with a state certified building inspector to determine if the failure of the equipment or improvements has resulted in additional hazards or damage to the property.

A port district may only finance these noise abatement programs with the proceeds of federal grants or loans, revenues generated by abatement programs, airport revenues, and bonds based upon such revenues.

In 2024, the Port of Seattle anticipates approximately \$1 billion in operating revenue. Of this revenue, about 6.3 percent or \$86,665,000, will come from the regular tax levy within the port.

This represents an increase of 4.8 percent, or around \$4 million, from the 2023 levy. The maximum allowable levy for the port in 2024 is \$115,600,000.

In 2021, the Legislature implemented a cap-and-trade program to reduce carbon emissions. Under this program, carbon allocations are auctioned off by the Department of Ecology. Most of the revenue from these auctions goes into the Climate Commitment Account. Money within the account may only be spent after an appropriation.

Summary of Bill:

Remedial Mitigation Programs.

Port districts qualified to undertake a noise abatement program must additionally undertake a remedial mitigation program. This program may consist of:

- The repair or replacement of soundproofing or sound mitigation equipment that was provided under a sound abatement program and is functioning at a level that is measurably below that at which it was intended to function, or that has caused mold within the property ("failed mitigation equipment").
- The provision of sound mitigation equipment to residences, senior centers, youth centers, daycares, or schools (collectively "facilities").
- The provision of air quality mitigation equipment, including high particulate air purifiers designed to mitigate or eliminate aviation-related air pollution, to facilities.
- Programs to provide urban forests or green space within an impacted area.
- The provision for, or support of, community indoor recreation facilities.
- The provision of indoor community greenhouses in an impacted area.

For an individual property to receive a benefit under the remedial mitigation program, the property must meet one of three criteria:

- It must have previously been provided mitigation equipment that is determined by an inspection to have failed.
- It must be within 10 miles of an airport and subject to aircraft noise of a Day-Night Average Sound Level of at least 55 decibels.
- It might be within five miles of the end of a runway used for jet landings at the airport and within a two-mile radius of the landing path used by jets.

Benefits under the program must be provided in the following order:

1. To properties that have failed mitigation equipment.
2. For sound mitigation equipment, to properties that qualify under the aircraft noise criteria; and for air quality mitigation equipment, to properties that qualify because of proximity to a runway and landing path.
3. Finally, benefits can be provided to other qualifying properties.

A port district may not require the provision of an unconditional easement as a condition of receiving a benefit under the program.

Properties may also be provided benefits under a remedial mitigation program in order to realize community benefits.

Port districts must provide the inspections to determine whether mitigation equipment previously provided has failed, at the request of a qualifying property at no cost to the owner. Inspections may not be provided more than once every five years unless a prior inspection recommended an inspection at a shorter interval, or the port district contracted directly with the inspector. If the port district contracted directly with the inspector, then inspections, in the absence of a recommendation for a shorter interval, may be requested annually.

If, during an inspection, the inspector finds structural or other deficiencies that are unrelated to failed mitigation equipment, then the inspector must provide the property owner with a pamphlet, prepared by the port, that details government assistance programs available to assist with maintenance, repairs, energy assistance, or updating electrical systems within the impacted area.

Port districts must enter into an interlocal agreement with the county in which it is located for the provision of qualified building inspectors to conduct the necessary inspections. If the port district is unable to come to an agreement with the county, then the port must contract with qualified inspectors directly and must produce an annual report detailing the aggregate results of the inspections that were conducted during the year and the steps that the port district is taking to ensure that the inspections are fair and impartial.

Beginning February 1, 2026, and every year thereafter, the port district must produce a public report detailing the funds available for, and used on, remedial mitigation programs and the benefits that were provided under the programs.

After July 1, 2024, if a qualifying port district increases the dollar amount of the regular property tax levy revenue it receives over the prior year's levy, it must use half of the increased revenue for its remedial mitigation program. Additionally, after July 1, 2025, 1 percent of the regular property tax levy revenue raised by the port must be used for remedial mitigation programs. An additional 1 percent of the total regular property tax levy revenue must be used for remedial mitigation programs for each year after the first, until 10 percent of the regular property tax levy revenue is used for the programs.

The Department of Commerce ("the Department") is authorized to provide grants or loans to port districts required to undertake a remedial mitigation program for entering into interlocal agreements with a county for the provision of qualified building inspectors, or for contracting with the building inspectors directly. The Department must publish an annual report on its website detailing the grants made, including information on the number of inspectors hired because of the grants, the number of inspections conducted, and the number of remedial mitigation packages provided after an inspection.

Significant Port Actions and Adverse Impact Assessments.

An overburdened community is a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to pollutants or contaminants. A vulnerable population is a population group that is more likely to be at higher risk for poor health outcomes when dealing with environmental harms because of adverse socioeconomic factors and sensitivity factors. A significant port action is an action involving a capital improvement project, purchase, or construction of \$12 million or more.

Before approving a significant port action, a port district required to undertake a remedial mitigation program must:

- Conduct an assessment of the likely adverse cumulative impacts of the action on overburdened communities and vulnerable populations that will be affected by the action.
- Provide a written explanation of actions the port district is taking to minimize the adverse impacts or, if it is not taking action, why it is unable to do so.
- Consult with the overburdened communities and vulnerable populations about the proposed actions by, at a minimum, publicly providing the results of the assessment, conducting outreach to raise awareness of the proposed action, and holding at least one meeting at a location easily accessible to the community.

The Port District Environmental Equity Fund.

The Port District Environmental Equity Fund (Fund) is established in the state treasury. The Fund is managed by the Department. Money can be appropriated from the Fund to make grants and loans to port districts to undertake remedial mitigation programs or to comply with the requirements for conducting assessments and consultations related to significant port actions. In order to qualify for a grant or loan, a port district must demonstrate that the actions it proposes to take will measurably improve the effectiveness of remedial mitigation measures or communication and consultation related to significant port actions. The Department must publish an annual report on its website detailing the grants and loans made, the use to which those grants and loans have been put, and the benefits that have been realized.

Money from the Climate Commitment Account can be appropriated to the Fund.

Appropriation: None.

Fiscal Note: Requested on January 9, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.